

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

Chapter 11

In re:

2700 JEROME AVE. REALTY CORP.,  
Debtor.

Case No. 13-10699 (SHL)

**ORDER APPROVING DISCLOSURE STATEMENT AND CONFIRMING PLAN**

The Amended Plan (the “Plan”) under Chapter 11 of the Bankruptcy Code filed by 2700 Jerome Avenue Realty Corp. (the “Debtor”) on August 28, 2013 having been transmitted to creditors and equity security holders together with a copy of the Amended Disclosure Statement (the “Disclosure Statement”) conditionally approved by the Court on September 25, 2013 with Order entered on October 8, 2013; and

It having been determined after notice and a hearing that the requirements for final approval of the Disclosure Statement have been satisfied, and it having been determined after a hearing on notice that the requirements for confirmation of the Plan under 11 U.S.C. § 1129 have been satisfied:

**IT IS ORDERED** that:

1. The Disclosure Statement filed by the Debtor on October 9, 2013 is finally approved.
2. The Plan filed by the Debtor on August 28, 2013 is confirmed under section 1129 of the Bankruptcy Code. A copy of the confirmed Plan is attached.
3. The “effective date” of this Plan is the eleventh business day following the date of the entry of this order of confirmation.
4. The Debtor’s executory contract with Jacob Rad (contract dated March 22, 2012 with a Second Amendment dated August 1, 2012) regarding the sale of Debtor’s real property known as 2700 Jerome Avenue, Bronx, NY 10467 (the “Premises”) is rejected.
5. Upon the effective date of this Plan, the Debtor shall authorize and direct the release and return of Jacob Rad’s \$100,000 down payment held in escrow by attorney Jaime Ramirez (NY

bar registration number 2001394) in connection with said rejected Jacob Rad executory contract.

6. A proof of a claim, if any, arising from the rejection of the executory contract with Jacob Rad must be filed with the Clerk of the Court no later than sixty (60) days after the date of entry of the order confirming this Plan.

7. The Debtor shall have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.

8. The Debtor's contract of sale with its rider, both dated July 22nd 2013, for the sale of its Premises for \$5,500,000 to APT NYC DEVELOPMENT 2700 LLC is approved and assumed.

9. The sale of the Premises shall be transfer-tax exempt in accordance with section 1146(a) of the Bankruptcy Code, which provides as follows: "The issuance, transfer, or exchange of a security, or the making or delivery of an instrument of transfer under a plan confirmed under section 1129 of this title, may not be taxed under any law imposing a stamp tax or similar tax."

10. Funds from the sale of the Premises shall pay all allowed claims in full at the title closing. And funds shall be further held in escrow to the extent necessary to ensure payment in full on all disputed claims herein until said claims are finally allowed and paid or until said claims are finally disallowed.

11. Upon payment in full on their claims, all mortgagee creditors and judgment creditors and lien creditors with respect to the Premises shall forthwith issue satisfactions, vacate their judgments, release their liens, cancel any notice of pendency, and discontinue any pending related court actions.

12. In accordance with section 1141(d)(3) of the Bankruptcy Code, the Debtor will not receive any discharge of debt in this bankruptcy case.

13. Until entry of the final decree, or until the case is converted or dismissed, the Debtor shall file monthly reports of disbursements and serve copies thereof on the Office of the U.S. Trustee.

14. Until entry of the final decree, or until the case is converted or dismissed, the Debtor shall pay quarterly fees to the U.S. Trustee in accordance with 28 U.S.C. § 1930(a)(6).

15. Additional provisions set forth in the Plan shall apply unless they are inconsistent with a specific provision of this Order. If any provision of the Plan is inconsistent with this Order, the provisions of this Order shall control.

16. The Court shall retain exclusive jurisdiction for the following purposes:

- (a) to determine all objections to Claims;
- (b) to permit amendments to Schedules;
- (c) to determine all Administrative Claims including, without limitation, applications for the allowance of compensation and reimbursement of expenses, provided that applications for allowance of compensation and reimbursement of expenses shall be filed within 300 days after the effective date of this Plan;
- (d) to estimate all Disputed Claims;
- (e) to determine all applications and adversary proceedings pending on the effective date of this Plan or filed or commenced within 300 days thereafter;
- (f) to determine all disputes concerning the interpretation of the Plan and to correct any defect, cure any omission, reconcile any inconsistency in the Plan;
- (g) to enforce any orders, including the Confirmation Order, entered in connection with Debtor's Chapter 11 case.
- (h) to enter such orders as may be necessary or appropriate in aid of confirmation and to

facilitate the Plan, including full and continuing jurisdiction over the postpetition contract for the sale of Debtor's Premises and any disputes, issues, and matters relating thereto;

- (i) to modify the Plan to the full extent permitted by the Code;
- (j) to determine such other matters as may be provided for in the Confirmation Order; and
- (k) to enter a Final Order closing Debtor's Chapter 11 case.

Dated: New York, New York  
November 14, 2013

/s/ Sean H. Lane  
United States Bankruptcy Judge

UNITED STATES BANKRUPTCY COURT  
SOUTHERN DISTRICT OF NEW YORK

Chapter 11

In re:

2700 JEROME AVE. REALTY CORP.,

Case No. 13-10699 (SHL)

Debtor.

## DEBTOR'S AMENDED PLAN OF REORGANIZATION

### ARTICLE I SUMMARY

This Plan of Reorganization ("Plan") under Chapter 11 of the Bankruptcy Code ("Code") proposes to pay creditors of 2700 Jerome Ave. Realty Corp. ("Debtor") in full from the sale of its real property known as 2700 Jerome Avenue, Bronx, NY 10467 ("Premises") at the title closing.

This Plan provides for one class of priority claims, two classes of secured claims; one class of escrow-refund claim, one class of unsecured nonpriority claims; and one class of equity security holders. Unsecured nonpriority creditors holding allowed claims will receive distributions, which the proponent of this Plan has valued at approximately one-hundred cents on the dollar. This Plan also provides for the payment of administrative and priority claims if payment is not in full on the effective date of this Plan with respect to any such claim (to the extent permitted by the Code or the claimant's agreement).

All creditors and equity security holders should refer to Articles III through

VI of this Plan for information regarding the precise treatment of their claim. A disclosure statement that provides more detailed information regarding this Plan and the rights of creditors and equity security holders has been circulated with this Plan. Your rights may be affected. You should read these papers carefully and discuss them with your attorney, if you have one. (If you do not have an attorney, you may wish to consult one.)

## ARTICLE II CLASSIFICATION OF CLAIMS AND INTERESTS

- 2.01 Class 1. All allowed claims entitled to priority under § 507 of the Code (except administrative expense claims under § 507(a)(2), and priority tax claims under § 507(a)(8)).
- 2.02 Class 2. The claims of the New York State Department of Taxation and Finance, the New York City Department of Finance, the New York City Water Board, and the New York City Environmental Control Board, to the extent allowed as secured claims under § 506 of the Code.
- 2.03 Class 3. The claims of 2700 Funding Corp. (assignee of mortgages from BNB Bank), MJA Financial LLC, Carmen Berrios, and Lawrence J. Berger, P.C. to the extent allowed as secured claims under § 506 of the Code.
- 2.04 Class 4. The claim of Jacob Rad for a refund of his escrowed down payment in connection with the rejection herein of the executory

contract of sale of the Premises to him, to the extent allowed as a secured claim under § 506 of the Code or otherwise allowed as an unsecured claim under § 502 of the Code.

2.04 Class 5. But for a Jacob Rad escrow-refund claim, all unsecured claims allowed under § 502 of the Code, to include the claims of the Internal Revenue Service and the New York State Department of Taxation and Finance.

2.05 Class 6. Equity interests of the Debtor: sole stockholder Carlos Abreu.

### ARTICLE III TREATMENT OF ADMINISTRATIVE EXPENSE CLAIMS, U.S. TRUSTEES FEES, AND PRIORITY TAX CLAIMS

3.01 Unclassified Claims. Under section §1123(a)(1), administrative expense claims and priority tax claims are not in classes.

3.02 Administrative Expense Claims. Each holder of an administrative expense claim allowed under § 503 of the Code will be paid in full on the effective date of this Plan (as defined in Article VII), in cash, or upon such other terms as may be agreed upon by the holder of the claim and the Debtor: Debtor's attorney fees shall be paid in full at the title closing in the sale of the Premises.

3.03 Priority Tax Claims. Each holder of a priority tax claim — including the Internal Revenue Service, the New York State Department of Taxation and Finance, and the New York City Department of Finance — shall be paid in full at the title closing in the sale of the Premises.

3.04 United States Trustee Fees. All fees required to be paid by 28 U.S.C. §1930(a)(6) (U.S. Trustee Fees) will accrue and be timely paid until the case is closed, dismissed, or converted to another chapter of the Code. Any U.S. Trustee Fees owed on or before the effective date of this Plan will be paid on the effective date.

#### ARTICLE IV TREATMENT OF CLAIMS AND INTERESTS UNDER THE PLAN

4.01 Claims and interests shall be treated as follows under this Plan:

<u>Class</u>	<u>Impairment</u>	<u>Treatment</u>
1	Unimpaired	Full payment at the title closing in the sale of the Premises.
2	Unimpaired	Full payment at the title closing in the sale of the Premises.
3	Unimpaired	Full payment at the title closing in the sale of the Premises.
4	Unimpaired	Full payment upon the effective date of this Plan, as defined in Article VIII, by Debtor's authorization for the release and return of Jacob Rad's down payment held in escrow.
5	Unimpaired	Full payment at the title closing in the sale of the Premises.
6	Unimpaired	Carlos Abreu to retain his full stock ownership in Debtor.

#### ARTICLE V ALLOWANCE AND DISALLOWANCE OF CLAIMS

5.01 Disputed Claim. A disputed claim is a claim that has not been



allowed or disallowed [by a final non-appealable order], and as to which either: (i) a proof of claim has been filed or deemed filed, and the Debtor or another party in interest has filed an objection; or (ii) no proof of claim has been filed, and the Debtor has scheduled such claim as disputed, contingent, or unliquidated.

5.02 Delay of Distribution on a Disputed Claim. No distribution will be made on account of a disputed claim unless such claim is allowed by a final non-appealable order.

5.03 Settlement of Disputed Claims. The Debtor will have the power and authority to settle and compromise a disputed claim with court approval and compliance with Rule 9019 of the Federal Rules of Bankruptcy Procedure.

## ARTICLE VI PROVISIONS FOR EXECUTORY CONTRACTS AND UNEXPIRED LEASES

### 6.01 Assumed Executory Contracts and Unexpired Leases.

(a) Debtor assumes the following executory contracts and/or unexpired leases: the contract of sale with its rider, both dated July 22nd 2013, for the sale of the Premises for \$5,500,000 to APT NYC DEVELOPMENT 2700 LLC with payment of broker's commission of \$275,000 to Prela Global Group, LLC. The confirmation of this Plan shall be Court approval of said executory contract with its rider.

(b) Debtor will be conclusively deemed to have rejected all executory contracts and/or unexpired leases not expressly assumed under section 6.01(a) above. A proof of a claim arising from the rejection of an executory contract or

unexpired lease under this section must be filed no later than sixty (60 ) days after the date of the order confirming this Plan. In particular, Debtor rejects the executory contract with Jacob Rad (contract dated March 22, 2012 with a Second Amendment dated August 1, 2012) regarding the sale of the Premises. The confirmation of this Plan shall be Court approval of Debtor's rejection of said Jacob Rad executory contract.

ARTICLE VII  
MEANS FOR IMPLEMENTATION OF THE PLAN

7.01 Debtor will pay its creditors from the sale of its Premises at the title closing pursuant to confirmation of the Plan: Debtor's contract of sale with its rider, both dated July 22nd 2013, for the sale of the Premises for \$5,500,000 to APT NYC DEVELOPMENT 2700 LLC with payment of broker's commission of \$275,000 to Praela Global Group, LLC is attached and incorporated herein by reference.

7.02 Funds from the sale of the Premises shall pay all allowed claims in full at the title closing. And funds shall be further held in escrow to the extent necessary to ensure payment in full on all disputed claims herein until said claims are finally allowed and paid or until said claims are finally disallowed.

7.03 Debtor shall hold in escrow the sum of \$100,000 in connection with payment of administrative expenses, with disbursement subject to Court approval.

7.04 Debtor shall retain all residual funds after payment in full of all allowed claims.

7.05 Upon the effective date of this Plan, as defined in Article VIII, Debtor shall authorize and direct the release and return of Jacob Rad's \$100,000 down payment held in escrow by attorney Jaime Ramirez (NY bar registration number 2001394) in connection with the Jacob Rad executory contract that is rejected through this Plan.

## ARTICLE VIII GENERAL PROVISIONS

8.01 Definitions and Rules of Construction. The definitions and rules of construction set forth in §§ 101 and 102 of the Bankruptcy Code (hereinafter "Code") shall apply when terms defined or construed in the Code are used in this Plan. They are supplemented by the following definitions:

- "Premises" means the Debtor's real property known as 2700 Jerome Avenue, Bronx, NY 10467 and also known as Bronx County: Tax Section 12, Tax Block 3317, Tax Lot 17; and
- "Closing" or "title closing" means the settlement of the obligations of the Debtor as Seller and the obligations of the Purchaser to each other under the contract of sale with its rider, both dated July 22nd 2013, for the sale of the Premises for \$5,500,000 and includes the payment of that much of the purchase price that is sufficient to pay all claims herein in full, and the corresponding delivery to the Purchaser of the deed to the Premises.

8.02 Effective Date of Plan. The "effective date" of this Plan is the eleventh business day following the date of the entry of the order of confirmation. But if a

stay of the confirmation order is in effect on that date, the effective date will be the first business day after that date on which no stay of the confirmation order is in effect, provided that the confirmation order has not been vacated.

8.03 Severability. If any provision in this Plan is determined to be unenforceable, the determination will in no way limit or affect the enforceability and operative effect of any other provision of this Plan.

8.04 Binding Effect. The rights and obligations of any entity named or referred to in this Plan will be binding upon, and will inure to the benefit of the successors or assigns of such entity.

8.05 Captions. The headings contained in this Plan are for convenience of reference only and do not affect the meaning or interpretation of this Plan.

8.06 Controlling Effect. Except as otherwise provided in this Plan, unless a rule of law or procedure is supplied by federal law (including the Code or the Federal Rules of Bankruptcy Procedure), the laws of the State of New York shall govern this Plan and any agreements, documents, and instruments executed in connection with this Plan.

8.07 Corporate Governance. In accordance with § 1123(a)(6) of the Code, Debtor shall continue as a privately held corporation with its one class of stock.

## ARTICLE IX NO DISCHARGE OF DEBTOR

9.01 No Discharge. In accordance with § 1141(d)(3) of the Code, the Debtor

will not receive any discharge of debt in this bankruptcy case.

ARTICLE X  
OTHER PROVISIONS

10.01 Debtor reserves the right to amend or modify the Plan to the full extent permitted by law.

10.02 Debtor shall have a ten day grace period to make any payment required under the Plan. Partial pre-payments by the Debtor shall be applied against the payments in the inverse order of their due date.

10.03 Upon payment in full on their claims, all mortgagee and judgment creditors with respect to the Premises shall forthwith issue satisfactions, vacate their judgments, release their liens, cancel any notice of pendency, and discontinue any pending related court actions.

10.04 The Court shall retain exclusive jurisdiction for the following purposes:

- (a) to determine all objections to Claims;
- (b) to permit amendments to Schedules;
- (c) to determine all Administrative Claims including, without limitation, applications for the allowance of compensation and reimbursement of expenses, provided that applications for allowance of compensation and reimbursement of expenses shall be filed within 300 days after the effective date of this Plan;
- (d) to estimate all Disputed Claims;

(e) to determine all applications and adversary proceedings pending on the effective date of this Plan or filed or commenced within 300 days thereafter;

(f) to determine all disputes concerning the interpretation of the Plan and to correct any defect, cure any omission, reconcile any inconsistency in the Plan;

(g) to enforce any orders, including the Confirmation Order, entered in connection with Debtor's Chapter 11 case.

(h) to enter such orders as may be necessary or appropriate in aid of confirmation and to facilitate the Plan, including full and continuing jurisdiction over the postpetition contract for the sale of Debtor's Premises and any disputes, issues, and matters relating thereto;

(i) to modify the Plan to the full extent permitted by the Code;

(j) to determine such other matters as may be provided for in the Confirmation Order; and

(k) to enter a Final Order closing Debtor's Chapter 11 case.

Dated: New York, New York  
August 27, 2013

Respectfully submitted,

2700 Jerome Ave. Realty Corp.

By: /s/ Carlos Abreu  
Carlos Abreu, President

Albert H. Barkey  
Attorney for Debtor

By: /s/ Albert H. Barkey  
Albert H. Barkey  
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New York, NY 10007  
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**NOTE:** This form is intended to cover matters common to most transactions. Provisions should be added, altered or deleted to suit the circumstances of a particular transaction.

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CONTRACT dated July *18*, 2013 between

2700 JEROME AVE. REALTY CORP. c/o Albert H. Barkey, Esq.  
277 Broadway, Suite 408, New York, New York 10007

“Seller”) and

APT NYC DEVELOPMENT 2700 LLC, c/o Laurence J. Bellom, Esq.  
814 Commerce Street, Thornwood, New York 10594

“Purchaser”).

**Seller and Purchaser hereby covenant and agree as follows:**

## Section 1. Sale of Premises and Acceptable Title

§1.01. Seller shall sell to Purchaser, and Purchaser shall purchase from Seller, at the price and upon the terms and conditions set forth in this contract: (a) the parcel of land more particularly described in Schedule A attached hereto ("Land"); (b) all buildings and improvements situated on the Land (collectively, "Building"); (c) all right, title and interest of Seller, if any, in and to the land lying in the bed of any street or highway in front of or adjoining the Land to the center line thereof and to any unpaid award for any taking by condemnation or any damage to the Land by reason of a change of grade of any street or highway; (d) the appurtenances and all the estate and rights of Seller in and to the Land and Building; and (e) all right, title and interest of Seller, if any, in and to the fixtures, equipment and other personal property attached or appurtenant to the Building (collectively, "Premises"). The Premises are located at or known as

2700 Jerome Avenue, Bronx, NY 10468  
Bronx County Tax Sec. 12, Block 3317,  
Tax Lot 17 .

§1.02. Seller shall convey and Purchaser shall accept fee simple title to the Premises in accordance with the terms of this contract, subject only to: (a) the matters set forth in Schedule B attached hereto (collectively, "Permitted Exceptions"); and (b) such other matters as (i) the title insurer specified in Schedule D attached hereto (or if none is so specified, then any title

insurer licensed to do business by the State of New York) shall be willing, without special premium, to omit as exceptions to coverage or to except with insurance against collection out of or enforcement against the Premises and (ii) shall be accepted by any lender described in Section 274-a of the Real Property Law ("Institutional Lender") which has committed in writing to provide mortgage financing to Purchaser for the purchase of the Premises ("Purchaser's Institutional Lender"), except that if such acceptance by Purchaser's Institutional Lender is unreasonably withheld or delayed, such acceptance shall be deemed to have been given.

**Section 2. Purchase Price, Acceptable Funds, Existing Mortgages, Purchase Money Mortgage, Escrow of Downpayment and Foreign Persons**

**§2.01.** The purchase price ("Purchase Price") to be paid by Purchaser to Seller for the Premises as provided in Schedule C attached hereto is \$ 5,500,000.00

§2.02. All monies payable under this contract, unless otherwise specified in this contract, shall be paid by (a) certified checks of Purchaser or any person making a purchase money loan to Purchaser drawn on any bank, savings bank, trust company or savings and loan association having a banking office in the State of New York or (b) official bank checks drawn by any such banking institution, payable to the order of Seller, except that uncertified checks of Purchaser payable to the order of Seller up to the amount of one-half of one percent of the Purchase Price shall be acceptable for sums payable to Seller at the Closing.



§2.03. (a) If Schedule C provides for the acceptance of a purchase money mortgage by Purchaser subject to one or more existing mortgages (collectively, "Existing Mortgage(s)"), the amounts specified in Schedule C with reference thereto may be approximate. If at the Closing the aggregate principal amount of the Existing Mortgage(s), as reduced by payments required thereunder prior to the Closing, is less than the aggregate amount of the Existing Mortgage(s) as specified in Schedule C, the difference shall be added to the monies payable at the Closing, unless otherwise expressly provided herein.

(b) If any of the documents constituting the Existing Mortgage(s) or the note(s) secured thereby prohibits or restricts the conveyance of the Premises or any part thereof without the prior consent of the holder or holders thereof ("Mortgagee(s)") or confers upon the Mortgagee(s) the right to accelerate payment of the indebtedness or to change the terms of the Existing Mortgage(s) in the event that a conveyance is made without consent of the Mortgagee(s), Seller shall notify such Mortgagee(s) of the proposed conveyance to Purchaser within 10 days after execution and delivery of this contract, requesting the consent of such Mortgagee(s) thereto. Seller and Purchaser shall furnish the Mortgagee(s) with such information as may reasonably be required in connection with such request and shall otherwise cooperate with such Mortgagee(s) and with each other in an effort expeditiously to procure such consent, but neither shall be obligated to make any payment to obtain such consent. If such Mortgagee(s) shall fail or refuse to grant such consent in writing on or before the date set forth in Schedule D or shall require as a condition of the granting of such consent (i) that additional consideration be paid to the Mortgagee(s) and neither Seller nor Purchaser is willing to pay such additional consideration or (ii) that the terms of the Existing Mortgage(s) be changed and Purchaser is unwilling to accept such change, then unless Seller and Purchaser mutually agree to extend such date or otherwise modify the terms of this contract, Purchaser may terminate this contract in the manner provided in §13.02. If Schedule C provides for a Purchase Money Mortgage (as defined in §2.04), Seller may also terminate this contract in the manner provided in §13.02 if any of the foregoing circumstances occur or if Seller is unwilling to accept any such change in the terms of the Existing Mortgage(s).

§2.04. (a) If Schedule C provides for payment of a portion of the Purchase Price by execution and delivery to Seller of a note secured by a purchase money mortgage ("Purchase Money Mortgage"), such note and Purchase Money Mortgage shall be drawn by the attorney for the Seller on the most recent forms of the New York Board of Title Underwriters for notes and for mortgages of like lien, as modified by this contract. At Closing, Purchaser shall pay the mortgage recording tax and recording fees therefor and the filing fees for any financial statements delivered in connection therewith.

(b) If Schedule C provides for the acceptance of a purchase money mortgage by Purchaser subject to Existing Mortgage(s) prior in lien to the Purchase Money Mortgage, the Purchase Money Mortgage shall provide that it is subject and subordinate to the Existing Mortgage(s) and shall be subject and subordinate to any extensions, modifications, renewals, consolidations, substitutions or replacements thereof (collectively, "Refinancing" or "Refinanced Mortgage"), provided that (i) the rate of interest payable under a Refinanced Mortgage shall not be greater than that specified in Schedule D as the Maximum Interest Rate or, if no Maximum Interest Rate is specified in Schedule D, shall not be greater than the rate of interest that was payable on the refinanced indebtedness immediately prior to such Refinancing, and (ii) if the principal amount of the Refinanced Mortgage plus the principal amount of other Existing Mortgage(s), if any, remaining after placement of a Refinanced Mortgage exceeds the amount of principal owing and unpaid on all mortgages on the Premises superior to the Purchase Money Mortgage immediately prior to the Refinancing, an amount equal to the excess shall be paid at the closing of the Refinancing to the holder of the Purchase Money Mortgage in reduction of principal payments due thereunder in inverse order of maturity. The Purchase Money Mortgage shall further provide that the holder thereof shall, on demand and without charge therefor, execute, acknowledge and deliver any agreement or agreements reasonably required by the mortgagor to confirm such subordination.

(c) The Purchase Money Mortgage shall contain the following additional provisions:

(i) "The mortgagor or any owner of the mortgaged premises shall have the right to prepay the entire unpaid indebtedness together with accrued interest, but without penalty, at any time on or after [insert the day following the last day of the fiscal year of the mortgagee in which the Closing occurs or, if a Prepayment Date is specified in Schedule D, the specified Prepayment Date], on not less than 10 days' written notice to the holder hereof."

(ii) "Notwithstanding anything to the contrary contained herein, the obligation of the mortgagor for the payment of the indebtedness and for the performance of the terms, covenants and conditions contained herein and in the note secured hereby is limited solely to recourse against the property secured by this mortgage, and in no event shall the mortgagor or any principal of the mortgagor, disclosed or un-

disclosed, be personally liable for any breach of default under the note of this mortgage or for any deficiency resulting from or through any proceedings to foreclose this mortgage, nor shall any deficiency judgment, money judgment or other personal judgment be sought or entered against the mortgagor or any principal of the mortgagor, disclosed or undisclosed, but the foregoing shall not adversely affect the lien of this mortgage or the mortgagee's right of foreclosure."

(iii) "In addition to performing its obligations under Section 274-a of the Real Property Law, the mortgagee, if other than one of the institutions listed in Section 274-a, agrees that, within 10 days after written request by the mortgagor, but not more than twice during any period of 12 consecutive months, it will execute, acknowledge and deliver without charge a certificate of reduction in recordable form (a) certifying as to (1) the then unpaid principal balance of the indebtedness secured hereby, (2) the maturity date thereof, (3) the rate of interest, (4) the last date to which interest has been paid and (5) the amount of any escrow deposits then held by the mortgagee, and (b) stating, to the knowledge of the mortgagee, whether there are any alleged defaults hereunder and, if so, specifying the nature thereof."

(iv) "All notices required or desired to be given under this mortgage shall be in writing and shall be delivered personally or shall be sent by prepaid registered or certified mail, addressed to the mortgagor and mortgagee at the addresses specified in this mortgage or to such other parties or at such other addresses, not exceeding two, as may be designated in a notice given to the other party or parties in accordance with the provisions hereof."

(v) The additional provisions, if any, specified in a rider hereto.

§2.05. (a) If the sum paid under paragraph (a) of Schedule C or any other sums paid on account of the Purchase Price prior to the Closing (collectively, "Downpayment") are paid by check or checks drawn to the order of and delivered to Seller's attorney or another escrow agent ("Escrowee"), the Escrowee shall hold the proceeds thereof in escrow in a special bank account (or as otherwise agreed in writing by Seller, Purchaser and Escrowee) until the Closing or sooner termination of this contract and shall pay over or apply such proceeds in accordance with the terms of this section. Escrowee need not hold such proceeds in an interest-bearing account, but if any interest is earned thereon, such interest shall be paid to the same party entitled to the escrowed proceeds, and the party receiving such interest shall pay any income taxes thereon. The tax identification numbers of the parties are either set forth in Schedule D or shall be furnished to Escrowee upon request. At the Closing, such proceeds and the interest thereon, if any, shall be paid by Escrowee to Seller. If for any reason the Closing does not occur and either party makes a written demand upon Escrowee for payment of such amount, Escrowee shall give written notice to the other party of such demand. If Escrowee does not receive a written objection from the other party to the proposed payment within 10 business days after the giving of such notice, Escrowee is hereby authorized to make such payment. If Escrowee does receive such written objection within such 10 day period or if for any other reason Escrowee in good faith shall elect not to make such payment, Escrowee shall continue to hold such amount until otherwise directed by written instructions from the parties to this contract or a final judgment of a court. However, Escrowee shall have the right at any time to deposit the escrowed proceeds and interest thereon, if any, with the clerk of the Supreme Court of the county in which the Land is located. Escrowee shall give written notice of such deposit to Seller and Purchaser. Upon such deposit Escrowee shall be relieved and discharged of all further obligations and responsibilities hereunder.

(b) The parties acknowledge that Escrowee is acting solely as a stakeholder at their request and for their convenience, that Escrowee shall not be deemed to be the agent of either of the parties, and that Escrowee shall not be liable to either of the parties for any act or omission on its part unless taken or suffered in bad faith, in willful disregard of this contract or involving gross negligence. Seller and Purchaser shall jointly and severally indemnify and hold Escrowee harmless from and against all costs, claims and expenses, including reasonable attorneys' fees, incurred in connection with the performance of Escrowee's duties hereunder, except with respect to actions or omissions taken or suffered by Escrowee in bad faith, in willful disregard of this contract or involving gross negligence on the part of Escrowee.

(c) Escrowee has acknowledged agreement to these provisions by signing in the place indicated on the signature page of this contract.

§2.06. In the event that Seller is a "foreign person", as defined in Internal Revenue Code Section 1445 and regulations issued thereunder (collectively, the "Code Withholding Section"), or in the event that Seller fails to deliver the certification of non-foreign status required under §10.12(c), or in the event that Purchaser is not entitled under the Code Withholding Section to rely on such certification, Purchaser shall deduct and withhold from the Purchase Price a sum equal to ten percent (10%) thereof and shall at Closing remit the withheld

§6.02. Unless otherwise provided in a schedule attached to this contract, between the date of this contract and the Closing, Seller shall not permit occupancy of, or enter into any new lease for, space in the Building which is presently vacant or which may hereafter become vacant without first giving Purchaser written notice of the identity of the proposed tenant, together with (a) either a copy of the proposed lease or a summary of the terms thereof in reasonable detail and (b) a

## Section 7. Responsibility for Violations

§7.02. If the reasonably estimated aggregate cost to remove or comply with any violations or liens which Seller is required to remove or comply with pursuant to the provisions of §7.01 shall exceed the Maximum Amount specified in Schedule D (or if none is so specified, the Maximum Amount shall be one-half of one percent of the Purchase Price), Seller shall have the right to cancel this contract, in which event the sole

## Section 8. Destruction, Damage or Condemnation

## Section 9. Covenants of Seller

## Section 10. Seller's Closing Obligations

**§10.05. All Service Contracts** initiated by Purchaser and all others in Seller's possession which are in effect on the Closing Date and which are assignable by Seller.

811.04. Cause the deed to be recorded, duly complete all required real property transfer tax returns and cause all such returns and checks in payment of such taxes to be delivered to the appropriate officers promptly after the Closing.

§10.07. (a) Written consent(s) of the Mortgagee(s), if required under §2.03(b), and (b) certificate(s) executed by the Mortgagee(s) in proper form for recording and certifying (i) the amount of the unpaid principal balance thereof, (ii) the maturity date thereof, (iii) the interest rate, (iv) the last date to which interest has been paid thereon and (v) the amount of any escrow deposits held by the Mortgagee(s). Seller shall pay the fees for recording such certificate(s). Any Mortgagee which is an Institutional Lender may furnish a letter complying with Section 274-a of the Real Property Law in lieu of such certificate.

## Section 12. Apportionments

**§10.09.** All original insurance policies with respect to which premiums are to be apportioned or, if unobtainable, true copies or certificates thereof.

(a) prepaid rents and Additional Rents (as defined in §12.03);

(c) real estate taxes, water charges, sewer rents and vault charges, if any, on the basis of the fiscal period for which assessed, except that if there is a water meter on the Premises, apportionment at the Closing shall be based on the last available reading, subject to adjustment after the Closing when the next reading is available;

(d) wages, vacation pay, pension and welfare benefits and other fringe benefits of all persons employed at the Premises whose employment was not terminated at or prior to the Closing;

(e) value of fuel stored on the Premises, at the price then charged by Seller's supplier, including any taxes;

(f) charges under transferable Service Contracts or permitted renewals or replacements thereof;

(g) permitted administrative charges, if any, on tenants' security deposits;

(h) dues to rent stabilization associations, if any;

(i) insurance premiums on transferable insurance policies listed on a schedule hereto or permitted renewals thereof;

(j) Reletting Expenses under §6.02, if any; and

(k) any other items listed in Schedule D.

If the Closing shall occur before a new tax rate is fixed, the apportionment of taxes at the Closing shall be upon the basis of the old tax rate for the preceding period applied to latest assessed valuation. Promptly after the new tax rate is fixed, the apportionment of taxes shall be recomputed. Any discrepancy resulting from such recomputation and any errors or omissions in computing apportionments at Closing shall be promptly corrected, which obligations shall survive the Closing.

§12.02. If any tenant is in arrears in the payment of rent on the Closing Date, rents received from such tenant after the Closing shall be applied in the following order of priority: (a) first to the month preceding the month in which the Closing occurred; (b) then to the month in which the Closing occurred; (c) then to any month or months following the month in which the Closing occurred; and (d) then to the period prior to the month preceding the month in which the Closing occurred. If rents or any portion thereof received by Seller or Purchaser after the Closing are payable to the other party by reason of this allocation, the appropriate sum, less a proportionate share of any reasonable attorneys' fees, costs and expenses of collection thereof, shall be promptly paid to the other party, which obligation shall survive the Closing.

§12.03. If any tenants are required to pay percentage rent, escalation charges for real estate taxes, operating expenses, cost-of-living adjustments or other charges of a similar nature ("Additional Rents") and any Additional Rents are collected by Purchaser after the Closing which are attributable in whole or in part to any period prior to the Closing, then Purchaser shall promptly pay to Seller Seller's proportionate share thereof, less a proportionate share of any reasonable attorneys' fees, costs and expenses of collection thereof, if and when the tenant paying the same has made all payments of rent and Additional Rent then due to Purchaser pursuant to the tenant's Lease, which obligation shall survive the Closing.

### Section 13. Objections to Title, Failure of Seller or Purchaser to Perform and Vendee's Lien

**§13.01.** Purchaser shall promptly order an examination of title and shall cause a copy of the title report to be forwarded to Seller's attorney upon receipt. Seller shall be entitled to a reasonable adjournment or adjournments of the Closing for up to 60 days or until the expiration date of any written commitment of Purchaser's Institutional Lender delivered to Purchaser prior to the scheduled date of Closing, whichever occurs first, to remove any defects in or objections to title noted in such title report and any other defects or objections which may be disclosed on or prior to the Closing Date.

§13.02. If Seller shall be unable to convey title to the Premises at the Closing in accordance with the provisions of this contract or if Purchaser shall have any other grounds under this contract for refusing to consummate the purchase provided for herein, Purchaser, nevertheless, may elect to accept such title as Seller may be able to convey with a credit against the monies payable at the Closing equal to the reasonably estimated cost to cure the same (up to the Maximum Expense described below), but without any other credit or liability on the part of Seller. If Purchaser shall not so elect, Pur-

chaser may terminate this contract at any time after the Closing. If the Seller shall be to refund the Downpayment to Purchaser and to reimburse Purchaser for the net cost of title examination, but not to exceed the net amount charged by Purchaser's title company therefor without issuance of a policy, and the net cost of updating the existing survey of the Premises or the net cost of a new survey of the Premises if there was no existing survey or the existing survey was not capable of being updated and a new survey was required by Purchaser's Institutional Lender. Upon such refund and reimbursement, this contract shall be null and void and the parties hereto shall be relieved of all further obligations and liability other than any arising under Section 14. Seller shall not be required to bring any action or proceeding or to incur any expense in excess of the Maximum Expense specified in Schedule D (or if none is so specified, the Maximum Expense shall be one-half of one percent of the Purchase Price) to cure any title defect or to enable Seller otherwise to comply with the provisions of this contract, but the foregoing shall not permit Seller to refuse to pay off at the Closing, to the extent of the monies payable at the Closing, mortgages on the Premises, other than Existing Mortgages, of which Seller has actual knowledge.

§13.03. Any unpaid taxes, assessments, water charges and sewer rents, together with the interest and penalties thereon to a date not less than two days following the Closing Date, and any other liens and encumbrances which Seller is obligated to pay and discharge or which are against corporations, estates or other persons in the chain of title, together with the cost of recording or filing any instruments necessary to discharge such liens and encumbrances of record, may be paid out of the proceeds of the monies payable at the Closing if Seller delivers to Purchaser on the Closing Date official bills for such taxes, assessments, water charges, sewer rents, interest and penalties and instruments in recordable form sufficient to discharge any other liens and encumbrances of record. Upon request made a reasonable time before the Closing, Purchaser shall provide at the Closing separate checks for the foregoing payable to the order of the holder of any such lien, charge or encumbrance and otherwise complying with §2.02. Purchaser's title insurance company is willing to insure both Purchaser and Purchaser's Institutional Lender, if any, that such charges, liens and encumbrances will not be collected out of or enforced against the Premises, then, unless Purchaser's Institutional Lender reasonably refuses to accept such insurance in lieu of actual payment and discharge, Seller shall have the right in lieu of payment and discharge to deposit with the title insurance company such funds or assurances or to pay such special or additional premiums as the title insurance company may require in order to so insure. In such case the charges, liens and encumbrances with respect to which the title insurance company has agreed so to insure shall not be considered objections to title.

§13.04. If Purchaser shall default in the performance of his obligation under this contract to purchase the Premises, the sole remedy of Seller shall be to retain the Downpayment as liquidated damages for all loss, damage and expense suffered by Seller, including without limitation the loss of its bargain.

§13.05. Purchaser shall have a vendee's lien against the Premises for the amount of the Downpayment, but such lien shall not continue after default by Purchaser under this contract.

#### Section 14. Broker

§14.01. If a broker is specified in Schedule D, Seller and Purchaser mutually represent and warrant that such broker is the only broker with whom they have dealt in connection with this contract and that neither Seller nor Purchaser knows of any other broker who has claimed or may have the right to claim a commission in connection with this transaction, unless otherwise indicated in Schedule D. The commission of such broker shall be paid pursuant to separate agreement by the party specified in Schedule D. If no broker is specified in Schedule D, the parties acknowledge that this contract was brought about by direct negotiation between Seller and Purchaser and that neither Seller nor Purchaser knows of any broker entitled to a commission in connection with this transaction. Unless otherwise provided in Schedule D, Seller and Purchaser shall indemnify and defend each other against any costs, claims or expenses, including attorneys' fees, arising out of the breach on their respective parts of any representations, warranties or agreements contained in this paragraph. The representations and obligations under this paragraph shall survive the Closing or, if the Closing does not occur, the termination of this contract.

#### Section 15. Notices

§15.01. All notices under this contract shall be in writing and shall be delivered personally or shall be sent by prepaid registered or certified mail, addressed as set forth in Schedule D, or as Seller or Purchaser shall otherwise have given notice as herein provided.

#### Section 16. Limitations on Survival of Representations, Warranties, Covenants and other Obligations

§16.01. Except as otherwise provided in this contract, no representations, warranties, covenants or other obligations of Seller set forth in this contract shall survive the Closing, and

the representations, warranties, covenants and other obligations of Seller set forth in §4.03, §6.01 and §6.02 shall survive until the Limitation Date specified in Schedule D (or if none is so specified, the Limitation Date shall be the date which is six months after the Closing Date), and no action based thereon shall be commenced after the Limitation Date.

§16.02. The delivery of the deed by Seller, and the acceptance thereof by Purchaser, shall be deemed the full performance and discharge of every obligation on the part of Seller to be performed hereunder, except those obligations of Seller which are expressly stated in this contract to survive the Closing.

#### Section 17. Gains Tax and Miscellaneous Provisions

§17.01. If consent of the Existing Mortgagee(s) is required under §2.03(b), Purchaser shall not assign this contract or its rights hereunder without the prior written consent of Seller. No permitted assignment of Purchaser's rights under this contract shall be effective against Seller unless and until an executed counterpart of the instrument of assignment shall have been delivered to Seller and Seller shall have been furnished with the name and address of the assignee. The term "Purchaser" shall be deemed to include the assignee under any such effective assignment.

§17.02. This contract embodies and constitutes the entire understanding between the parties with respect to the transaction contemplated herein, and all prior agreements, understandings, representations and statements, oral or written, are merged into this contract. Neither this contract nor any provision hereof may be waived, modified, amended, discharged or terminated except by an instrument signed by the party against whom the enforcement of such waiver, modification, amendment, discharge or termination is sought, and then only to the extent set forth in such instrument.

§17.03. This contract shall be governed by, and construed in accordance with, the law of the State of New York.

§17.04. The captions in this contract are inserted for convenience of reference only and in no way define, describe or limit the scope or intent of this contract or any of the provisions hereof.

§17.05. This contract shall be binding upon and shall inure to the benefit of the parties hereto and their respective heirs or successors and permitted assigns.

§17.06. This contract shall not be binding or effective until properly executed and delivered by Seller and Purchaser.

§17.07. As used in this contract, the masculine shall include the feminine and neuter, the singular shall include the plural and the plural shall include the singular, as the context may require.

§17.08. If the provisions of any schedule or rider to this contract are inconsistent with the provisions of this contract, the provisions of such schedule or rider shall prevail. Set forth in Schedule D is a list of any and all schedules and riders which are attached hereto but which are not listed in the Table of Contents.

§17.09. (a) Seller and Purchaser agree to comply in a timely manner with the requirements of Article 31-B of the Tax Law of the State of New York and the regulations applicable thereto, as the same from time to time may be amended (collectively, the "Gains Tax Law"). Purchaser agrees to deliver to Seller a duly executed and acknowledged Transferee Questionnaire simultaneously with the execution of this contract or within five (5) business days after subsequent written request from Seller or Seller's attorney. At the Closing, Seller shall deliver (i) an official Statement of No Tax Due or (ii) an official Tentative Assessment and Return accompanied by a certified check or official bank check drawn on any banking institution described in §2.02(a), payable to the order of the State Tax Commission in the amount of the tax shown to be due thereon (it being understood, however, that if Seller has duly elected to pay such tax in installments, the amount so required to be paid shall be the minimum installment of such tax then permitted to be paid), or (iii) if applicable, a duly executed and acknowledged affidavit in form permitted under the Gains Tax Law claiming exemption therefrom.

(b) Seller agrees (i) to pay promptly any installment(s) or additional tax due under the Gains Tax Law, and interest and penalties thereon, if any, which may be assessed or due after the Closing, (ii) to indemnify and save the Purchaser harmless from and against any of the foregoing and any damage, liability, cost or expense (including reasonable attorneys' fees) which may be suffered or incurred by Purchaser by reason of the non-payment thereof, and (iii) to make any other payments and execute, acknowledge and deliver such further documents as may be necessary to comply with the Gains Tax Law.

(c) If this contract is assignable by Purchaser, no assignment of any rights hereunder shall be effective unless every assignor and assignee complies in a timely manner with the requirements of the Gains Tax Law applicable to the assignment transaction and unless an assignor or assignee de-



livers to Seller at or before the Closing the applicable items referred to in subparagraph (a) of this Section, all as may be required as a prerequisite to the recording of the deed. In addition to making the payments and delivering the instruments and documents referred to above, Purchaser and any assignor or assignee of this contract shall promptly (i) make any other payments and (ii) execute, acknowledge and deliver such further documents and instruments as may be necessary to comply with the Gains Tax Law.

(d) Purchaser, if request is made within a reasonable time prior to the Closing Date, shall provide at the Closing a separate certified or official bank check drawn on any banking institution described in §2.02(a) in the amount of the tax shown to be due on the official Tentative Assessment and Return, which amount shall be credited against the balance of the Purchase Price payable at the Closing.

(e) The provisions of this §17.09 shall survive the delivery of the deed.

IN WITNESS WHEREOF, the parties hereto have executed this contract as of the date first above written.

Seller: 2700 JEROME AVE. REALTY CORP.

By: Carlos Abreu

Purchaser: APT NYC DEVELOPMENT 2700 LLC

By: ZOF KOLAS

**Receipt by Escrowee**

The undersigned Escrowee hereby acknowledges receipt of \_\_\_\_\_, by check subject to collection, to be held in escrow pursuant to §2.05.

Albert H. Barkey, Esq.

**Schedule A**

**DESCRIPTION OF PREMISES**

(to be attached separately and to include tax map designation)

**Schedule B**

**PERMITTED EXCEPTIONS**

1. Zoning regulations and ordinances which are not violated by the existing structures or present use thereof and which do not render title uninsurable.

2. Consents by the Seller or any former owner of the Premises for the erection of any structure or structures on, under or above any street or streets on which the Premises may abut.

3. The Existing Mortgage(s) and financing statements, assignments of leases and other collateral assignments ancillary thereto.

4. Leases and Tenancies specified in the Rent Schedule and any new leases or tenancies not prohibited by this contract.

5. Unpaid installments of assessments not due and payable on or before the Closing Date.

6. Financing statements, chattel mortgages and liens on personalty filed more than 5 years prior to the Closing Date and not renewed, or filed against property or equipment no longer located on the Premises or owned by Tenants.

7. (a) Rights of utility companies to lay, maintain, install and repair pipes, lines, poles, conduits, cable boxes and related equipment on, over and under the Premises, provided that none of such rights imposes any monetary obligation on the owner of the Premises.

(b) Encroachments of stoops, areas, cellar steps, trim cornices, lintels, window sills, awnings, canopies, ledges, fences, hedges, coping and retaining walls projecting from the Premises over any street or highway or over any adjoining property and encroachments of similar elements projecting from adjoining property over the Premises.

(c) Revocability or lack of right to maintain vaults, coal chutes, excavations or sub-surface equipment beyond the line of the Premises.

(d) Any state of facts that an accurate survey would disclose, provided that such facts do not render title unmarketable. For the purposes of this contract, none of the facts shown on the survey, if any, identified below shall be deemed to render title unmarketable, and Purchaser shall accept title subject thereto:

**PURCHASE PRICE**

**The Purchase Price shall be paid as follows:**

(a) By check subject to collection, the receipt of which is hereby acknowledged by Seller:

**\$**

(b) By check or checks delivered to Seller at the Closing in accordance with the provisions of §2.02:

**\$ 5,250,000.00**

(c) By acceptance of title subject to the following Existing Mortgage(s):

Upon Court approval of  
this Contract of Sale

**\$ 250,000.00**

## MISCELLANEOUS

1. Title insurer designated by the parties (§1.02):  
TBD by Purchaser
2. Last date for consent by Existing Mortgagee(s) (§2.03(b)):  
N/A
3. Maximum Interest Rate of any Refinanced Mortgage  
(\$2.04(b)): N/A
4. Prepayment Date on or after which Purchase Money  
Mortgage may be prepaid (§2.04(c)):  
N/A
5. Seller's tax identification number (§2.05):  
13-4185756
6. Purchaser's tax identification number (§2.05):
7. Scheduled time and date of Closing (§3.01):  
see rider attached.
8. Place of Closing (§3.01):  
Law Offices of Laurence J. Bellom  
814 Commerce Street, Thornwood, NY 10594
9. Assessed valuation of Premises (§4.10):  
Actual Assessment: N/A  
Transition Assessment: N/A
10. Fiscal year and annual real estate taxes on Premises  
(\$4.10): TBD

11. Tax abatements or exemptions affecting Premises (§4.10):  
N/A
12. Assessments on Premises (§4.13):  
N/A
13. Maximum Amount which Seller must spend to cure violations, etc. (§7.02): see rider
14. Maximum Expense of Seller to cure title defects, etc. (§13.02): see rider
15. Broker, if any (§14.01):  
  
Prela Global Group, LLC  
980 Broadway Suite 636, Thornwood, NY  
10594
16. Party to pay broker's commission (§14.01):  
Seller
17. Address for notices (§15.01):  
If to Seller: c/o Albert H. Barkey, Esq.  
277 Broadway Suite 408  
New York, NY 10007

with a copy to Seller's attorney:

Albert H. Barkey, Esq.  
277 Broadway, Suite 408 New York, NY 10007

**If to Purchaser:**

c/o Laurence J. Bellom, Esq.  
814 Commerce Street  
Thornwood, NY 10594

with a copy to Purchaser's attorney:

Laurence J. Bellom, Esq.  
814 Commerce Street, Thornwood, NY 10594

18. Limitation Date for actions based on Seller's surviving representations and other obligations (§16.01):  
N/A
19. Additional Schedules or Riders (§17.08):  
See Rider attached.

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(d) By execution and delivery to Seller by Purchaser or its assignee of a note secured by a Purchase Money Mortgage on the Premises, payable as follows:

### Purchase Price

**\$ 5,500,000.00**

## Schedule E

### RENT SCHEDULE

(to be attached separately)

1. Seller hereby contracts to sell and convey its real property known as 2700 Jerome Avenue, Bronx, NY 10468 and also known as Bronx County, Tax Section 12, Tax Block 3317, Tax Lot



17 ( hereinafter Premises) to Purchaser. Seller shall give and Purchasers shall accept such title as any reputable title company shall be willing to approve and insure in accordance with its standard form of title policy approved by the New York State Insurance Department, subject only to the other terms of this Contract and the matters provided for herein. A true copy of the current deed in Seller's name is attached and incorporated herein by reference.

**2. Time is of the essence in this Contract; the purchase price of the Premises is \$5,500,000.**

3. The Premises is sold in an "as is" condition. And the Premises shall be vacant of tenants and tenancies as of the closing on this Contract.

4. This Contract is subject to and conditioned upon the following particular conjoint approvals of the U.S. Bankruptcy Court for the Southern District of New York ( hereinafter Court) in Seller' s extant Chapter 11 Case No. 13-10699-shl: This Contract must be approved by the Court as part of Seller' s confirmed Chapter 11 Plan so as to permit both Seller' s transfer of the Premises and said transfer occurring without Seller' s payment of related NYS transfer taxes. And correspondingly, Seller' s rejection of the executory contract between Seller and Jacob Rad ( contract dated March 22, 2012 with a Second Amendment thereto dated August 1, 2012) regarding the Premises must be approved by the Court as part of Seller' s confirmed Chapter 11 Plan.

5. This Contract is subject to and conditioned upon the following environmental abatement

.02 The abatement report of the independent professional third party jointly chosen by Seller and Purchaser shall determine for purposes of this Contract the cost of abatement. If Abatement is professionally determined and estimated to cost more than \$500,002, then this Contract may be

! Seller shall pay (solely at closing by crediting Purchaser as an adjustment to the purchase price) the first \$50,000 of abatement costs/expenses;

! Purchaser shall pay the next \$100,000 of abatement costs/expenses;

! Seller shall pay (solely at closing by crediting Purchaser as an adjustment to the purchase price) the next \$33,333 of abatement costs/expenses;

! Purchaser shall pay the next \$66,667 of abatement costs/expenses;

! Seller shall pay (solely at closing by crediting Purchaser as an adjustment to the purchase price) the next \$33,333 of abatement costs/expenses;

! Purchaser shall pay the next \$66,667 of abatement costs/expenses;

6. This Contract is subject to and conditioned upon Purchaser securing, within 150 days

after written notice to it of Court approval of this Contract, at its sole cost and expense, secondary private loans and/or the syndication for investor funds, or a firm commitment for a loan ( s ) , secured or otherwise, as the case may be, totaling \$5,500,000 or less as Purchaser shall choose to finance the purchase and renovation of the Premises. In the event the loan commitment is not timely issued, then Purchaser shall cancel this Contract by forthwith written notice to Seller.

7. Purchaser agrees to close title notwithstanding any conceivable wood-destroying insect infestation condition at the Premises. Purchaser has the option to have the Premises professionally inspected for termite infestation at its own cost and expense within 30 days after written notice to it of Court approval of this Contract. If active termite and/or other wood destroying insect infestation condition is found at the Premises, then a copy of the report issued by the inspector shall be provided to Seller within fourteen days thereafter ( 44 days after written notice of Court approval of this Contract) . Seller shall pay ( solely at closing by crediting Purchaser as an adjustment to the purchase price or by escrowing funds) the first \$2,000 of the cost and expense of curing said infestation. If Purchaser fails to have the Premises inspected or fails to timely provide Seller with the inspector's report, then Purchaser shall be deemed to have waived having Seller pay for the curing of any conceivable infestation.

8. All payments herein to, or for, Seller at closing shall be payable solely and only by good certified funds, teller checks, official checks, money orders (or attorney trust account checks totalling not more than \$100,000) issued by any bank, savings bank, trust company or savings and loan association having a banking office in New York.

9. Provided that they do not render title uninsurable, the Premises shall be sold and shall be conveyed subject to: (a) zoning and subdivision laws and regulations, provided that they are not violated by the existing building and improvements erected on the property or their use; (b) consents for the erection of any structure on, under, or above any streets on which the Premises abut; (c) encroachments of stoops, areas, cellar steps, trim and cornices, if any, upon any street or highway; and (d) real estate taxes that are a lien, but are not yet due and payable.

10. As of closing, the Premises need not be conveyed free of notes or notices of violations of law or municipal ordinances, orders, or requirements noted or issued by any governmental department having authority as to lands, housing, buildings, fire, health, environmental, and labor conditions affecting the Premises. However, Seller shall furnish Purchaser with any authorization necessary to make searches that could disclose these matters.

11. Seller represents and warrants to Purchaser that: (a) Seller is the sole owner of the

Premises and has the full right, power, and authority to sell, convey, and transfer the same in accordance with the terms of this Contract; (b) Seller is not a "foreign person", as that term is defined for purposes of the Foreign Investment in Real Property Tax Act, Internal Revenue Code section 1445, as amended, and the regulations promulgated thereunder; (c) the Premises is not affected by any exemptions or abatements of taxes; (d) Seller has been known by no other name for the past ten years; and (e) Seller covenants and warrants that all of the representations set forth in this Contract shall be true and correct at closing. None of Seller's covenants, representations, warranties or other obligations contained in this Contract shall survive closing.

12. Except for this Contract being subject to and conditioned upon Abatement due-diligence timing and the allocation of costs and expenses of cleanup and but for a termite inspection, Purchaser acknowledges and represents that it is fully aware of the physical condition and state of repair of the Premises and all other property included in this sale, based on Purchaser's own inspection and investigation thereof, and that Purchaser is entering into this Contract based solely upon such inspection and investigation and not upon any information, data, statements, or representations, written or oral, as to the physical condition, state of repair, use, cost of operation, or any other matter related to the Premises or any other property included in the sale, given or made by Seller or its

14. Closing shall take place at office of Purchaser's attorney, or otherwise at a place agreed upon by the parties, on or before 210 days after written notice to Purchaser of Court approval of this Contract.

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conditioned upon the following conditions precedent: (a) the accuracy, as of the date of closing, of the representations and warranties of Seller made in this Contract; (b) the delivery of the Premises and the building and improvements comprising a part thereof together with keys to the building; and (c) the delivery by the parties of any affidavits required as a condition of recording the deed.

16. Deed recording taxes shall be paid by Seller at closing; and Seller shall cause such payment to be delivered to the appropriate State, City, or County officer ( s ) at closing. Under U.S. bankruptcy law as applied to this Contract, Seller is exempt from paying deed transfer taxes.

17. Adjustments and apportionments of taxes, water charges and sewer rents shall be made as of midnight of the day before the date of closing on a thirty-day basis. Any errors or omissions in computing apportionments or other adjustments at closing shall be corrected within a reasonable time following closing -- and this paragraph shall survive the closing.

18. Seller shall credit Purchaser as an adjustment to the purchase price with the amount of any unpaid taxes, assessments, water charges, vault charges, and sewer rents, together with any interest and penalties thereon to a date not less than five business days after closing, provided that official bills therefor computed to said date are produced at closing or are otherwise determined by the title closer and paid through the closing.

21. If a title examination discloses judgments, bankruptcies or other returns against persons having names the same as or similar to that of Seller, Seller shall deliver an affidavit at closing showing that they are not against Seller or otherwise not extant, provided same is acceptable to Purchaser's

mortgage lender, if any, and the title company agrees to insure same.

22.) The contract downpayment payable to Seller's attorney, as Escrowee, to be held in escrow shall be \$250,000, and shall be paid to Escrowee within 7 days of the Court's approval of this Contract. Escrowee shall hold the down payment for Seller's and Purchaser's account in escrow in a trust account at any bank. Escrowee is authorized to payover from said escrow funds, as appropriate, to third party (ies) for environmental abatement testing expenses and related reports. The contract downpayment shall be in addition to the \$250,000 Abatement Escrow held by Escrowee pursuant to Par. 5.04 above. If this Contract is cancelled pursuant to its terms, other than as a result of Purchaser's willful default, this Contract shall terminate and come to an end, and neither party shall have any further rights, obligations or liabilities against or to the other hereunder or otherwise, and Escrowee shall refund Purchaser's down payment deposit held by him in escrow within 7 days of Escrowee's receipt of notice of contract termination.

23. If Purchaser willfully defaults hereunder, Seller's sole remedy shall be to receive and retain the down payment as liquidated damages, it being agreed that Seller's damages in case of Purchaser's willful default might be impossible to ascertain and that the down payment constitutes a fair and reasonable amount of damages under the circumstances and is not a penalty.

25. The acceptance of the deed by Purchaser shall be deemed full compliance by Seller of all the terms and conditions of this Contract. None of the provisions of this Contract shall survive said acceptance of the deed except as shall be specifically provided, in writing, to survive the closing.

.1 Any notice or other communication under this Contract shall be in writing and shall be sent by the parties through their respective attorneys who are hereby authorized to do so on their behalf or by the Escrowee, by registered or certified mail, postage prepaid, or by fax, email, or hand delivery. The sender of a fax or an email shall follow up with a telephone call to verify receipt thereof.

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original signatures.

31. Neither this Contract nor any provision thereof may be waived, changed, or cancelled except in writing. This Contract shall also apply to and bind the heirs, distributees, legal representatives, successors and permitted assigns of the respective parties. The parties hereby authorize their respective attorneys to agree in writing to any changes in dates and time periods provided for in this Contract.

32. This Contract shall not be binding or effective until duly executed by all parties and thereupon delivered by Seller back to Purchaser and until Escrowee deposits Purchaser's down payment in his escrow account.

33. Each party shall, at any time and from time to time, execute, acknowledge where appropriate and deliver such further instruments and documents and take such other action as may be reasonably requested by the other party in order to carry out the intent and purpose of this Contract. This paragraph shall survive the closing.

34. This Contract is intended for the exclusive benefit of the parties hereto and, except as otherwise expressly provided herein, shall not be for the benefit of, and shall not create any rights in, or be enforceable by, any other person or entity.

37. The foregoing represents the entire agreement of the parties and no modification, amendment, or extension thereof shall be valid, unless in writing, signed by all signatories to this agreement, but for the continuing obligation of good faith in carrying out its terms and intentions that is hereby deemed a part of this Contract.

